Supreme Court, U.S.
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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1998

CENTRAL STATE UNIVERSITY,
Petitioner,

v.

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, CENTRAL STATE UNIVERSITY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE OHIO SUPREME COURT HAS FUNDAMENTALLY MISUNDERSTOOD THE MEANING AND APPLICATION OF THE RATIONAL BASIS TEST UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT BY IMPOSING NEVER-BEFORE-CONTEMPLATED BURDENS ON THE GOVERNMENT WHEN THE CONSTITUTIONALITY OF LEGISLATION IS CHALLENGED.

LIST OF PARTIES

The Parties to the proceedings below were the same as those identified in the present caption.

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Central State University seeks a writ of certiorari to review and reverse the judgment of the Supreme Court of Ohio.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio is reported at 83 Ohio St. 3d 229 (1998). The opinion of Ohio's Second District Court of Appeals is unreported. The opinion of Court of Common Pleas of Greene County, Ohio is unreported. All three opinions are set forth in the attached Appendix.

JURISDICTIONAL STATEMENT

The opinion of the Supreme Court of Ohio was entered on September 30, 1998. Jurisdiction in this Court exists under 28 U.S.C. 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, that "no State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

Section 3345.45 of the Ohio Revised Code provides, in pertinent part, that:

> On or before January 1, 1994, the Ohio board of regents jointly with all state universities, as defined in section 3345.011 [3345.01.1] of the Revised Code, shall develop standards for instructional workloads for full-time and part-time faculty in keeping with the universities'

missions and with special emphasis on the undergraduate learning experience.

Notwithstanding section 4117.08 of the Revised Code, the policies adopted under this section are not appropriate subjects for collective bargaining. Notwithstanding division (A) of section 4117.10 of the Revised Code, any policy adopted under this section by a board of trustees prevails over any conflicting provisions of any collective bargaining agreement between an employees organization and that board of trustees.

Amended Substitute House Bill 152, Section 84.14, uncodified, took effect on July 1, 1993, and provides:

Pursuant to section 3334.45 of the Revised Code, the Ohio board of regents shall work with state universities to ensure that no later than fall term 1994 a minimum ten percent increase in statewide undergraduate teaching activity be achieved to restore the reductions experienced over the past decade. Notwithstanding section 3345.45 of the Revised Code, any collective bargaining agreement in effect on the effective date of this act shall continue in effect until its expiration date.

STATEMENT OF THE CASE

A. Introduction

This case involves a serious and patently erroneous misapplication of long-settled Equal Protection clause principles, and accordingly, the decision below requires summary reversal without need of oral argument.

In 1993, Ohio's legislature enacted a law designed to deal with the problem that professors at Ohio's public universities were spending insufficient time in classroom teaching and too much time on their own academic research. In order to redress this imbalance, the legislature enacted a law which requires professors at public universities to increase by ten percent the amount of their classroom teaching. The legislature further required that this mandate would supersede any collective bargaining agreements applicable to public university professors that might exist under state law.

This new legislative enactment is evidently "rationally related to a legitimate state purpose." *See Federal Communications Comm. v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993); *Dallas v. Stanglin*, 490 U.S. 19, 27 (1989). It is uncontested that improving the classroom teaching at public universities is a legitimate state purpose. And it is impossible to credibly contend that the legislature's mandate of increased time in the classroom is not rationally related to the legitimate state goal.

Yet, surprisingly, this is precisely what was decided by the Ohio Supreme Court, by a sharply divided 4-3 vote. The majority ruled that the State had not demonstrated that imposing these new workload policies on university professors would actually achieve the State's goal of better education for Ohio's students. In so ruling, the majority opinion unquestionably misunderstood and misapplied long-standing Equal Protection principles. As this Court has long since settled, under the rational basis test, a state is not required to prove, as an evidentiary burden, that its newly enacted legislation will necessarily solve the problem the legislation is aimed to correct. Instead, under firmly established precedents, all that is required is that the legislators rationally could have believed that the new legislature would have its intended effect. *See Beach Communications*, 508 U.S. at 313; *Bowen v. Gilliard*, 483 U.S. 537, 601 (1987).

In contravening this basic principle and these established recedents of Equal Protection jurisprudence, the Ohio Supreme Court committed a serious and unmistakeable error. Its decision, if allowed to stand, would prevent the State of Ohio from implementing a rational and reasonable policy designed to remedy a growing problem concerning the decline of undergraduate teaching in the State. Because the decision below was so obviously erroneous and because it would frustrate Ohio's legitimate educational objectives, this Court should summarily reverse the decision of the Ohio Supreme Court and reinstate the trial court's correct decision.

B. The Need for Appropriate Levels of Undergraduate Instruction.

In 1991, the Governor of Ohio convened the Managing for the Future Task Force ("Task Force") with the intent of producing recommendations for the improvement of

higher education in Ohio. The Task Force concluded that there had been a shift away from teaching and toward research at Ohio's four-year public colleges and universities during the decade of 1980-1990 and recommended that new state guidelines be established to reverse the trend.

The trend in Ohio is by no means unique. On the contrary, there have been many prominent national studies observing the need for universities to increase their efforts devoted to teaching. The Boyer Commission on Educating Undergraduates in the Research University, *Reinventing Undergraduate Education: A Blueprint for America's Research Universities*. (1998) (report accuses research universities of shortchanging their undergraduate students by putting research ahead of teaching); J. Mingle, *Faculty, Work and the Cost/Quality/Access Collision*" AAHE Bulletin (1993) (national surveys of faculty provide clear evidence of a shift of emphasis from teaching to research over the past two decades.) In response to this national trend, at least seven other states besides Ohio have legislation relating to faculty workload. Fla. Stat. §240.243 (sets minimum student contact hours); Kentucky Rev. Stat. §164.095, 70 Okl. Stat. §3215 and Tex. Educ. Code §61.047 (each requires development of faculty workload standards); N.M. Stat. Ann. §21-2-5.1 (permits faculty workload and education outcomes to be considered in funding formula); Cal. Ed. Code §66015.1, Ark. Stat. Ann. §6-61-206 (each require collection of data on faculty workload).

In response to the Task Force's Report, the Ohio General Assembly enacted R.C. 3345.45, which states, in part, that "the Ohio board of regents jointly with all state universities ... shall develop standards for instructional workloads for full-time and part-time faculty in keeping with the universities' missions and with special emphasis on the undergraduate learning experience," and that the policies

adopted shall not be "appropriate subjects for collective bargaining."

Also enacted as part of Amended Substitute House Bill 152 was section 84.14, uncodified, which provides, in part, that "a minimum ten percent increase in statewide undergraduate teaching activity be achieved to restore the reductions experienced over the past decade."

Soon after this new law took effect in July of 1993, the Ohio Board of Regents issued a report establishing a new range of acceptable undergraduate instruction at Ohio's public colleges and universities for baccalaureate, masters, and doctoral programs. At that time, Central State University -- a four-year public university located in Wilberforce, Ohio and the local chapter of the American Association of University Professors ("AAUP") were operating under a Collective Bargaining Agreement in effect September 1, 1991 through August 31, 1994. The terms of the Agreement stated that until such time as the parties could reach a new Agreement, the terms and conditions of the current Agreement would continue. Central State and the AAUP began contract talks in July, 1994.

B. The Underlying Proceedings

While AAUP and Central State continued to bargain over issues other than the guidelines for appropriate levels of undergraduate instruction, the AAUP, on May 17, 1995, filed a complaint alleging that R.C. 3345.45, and in particular the creation of a class of public employees not entitled to bargain regarding their workload, violates the Equal Protection Clauses of the Ohio and United States Constitutions. Both parties agreed that the rational basis test was the appropriate equal protection test to be applied. The trial court applied this test and upheld the constitutionality of the statute after

finding that the legislature had a legitimate governmental interest in reversing the shift toward research and away from teaching at Ohio's four-year public universities, and that R.C. 3345.45 furthered this objective.

AAUP appealed. The court of appeals reversed, concluding that the faculty members had a fundamental right to bargain collectively about the mix of teaching and research at Ohio's public universities. Central State then filed a notice of appeal and AAUP filed a cross-appeal to the Supreme Court of Ohio. On September 30, 1998, in a divided 4-3 vote, the Ohio Supreme Court affirmed the judgment.

The court first agreed with Central State that the case "involves neither a suspect class nor a fundamental right." 83 Ohio St. 3d 229, 234. The court then examined whether R.C. 3345.45 bears a rational relation to a legitimate governmental interest and found that it does not. It opined that "there is not a shred of evidence in the entire record which links collective bargaining with the decline in teaching over the last decade, or in any way purports to establish that collective bargaining contributed in the slightest to the lost faculty time devoted to undergraduate teaching." *Id.* at 236. The court's opinion concludes:

> . . . we cannot find any rational basis for singling out university faculty members as the only public employees as defined in R.C. 4117.01(C) [Ohio's collective bargaining statute] precluded from bargaining over their workload. Accordingly, we hold that R.C. 3345.45 violates the Equal Protection Clauses of the Ohio and United States Constitutions, since the classification contained therein bears no rational relationship to a legitimate governmental interest.

Id. at 237.

Three justices (Moyer, Cook, Stratton) dissented. They agreed with the majority that there was no fundamental right at issue. However, the dissenters, citing *Beach Communications*, 508 U.S. at 313 and *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992), correctly rejected the majority's view that the state had failed to prove a rational connection between the law and its objectives. Instead, said the dissenters, a state "has no obligation to produce evidence to sustain the rationality of a statutory classification," 83 Ohio St. 3d at 239, quoting *Beach Communications*, 508 U.S. at 315, and the plaintiff faculty members attacking the law could not "negative every conceivable basis which might support it, . . . whether or not the basis has a foundation in the record." 83 Ohio St. 3d at 240 (citations and quotations omitted).

REASONS FOR GRANTING THE WRIT

The Supreme Court of Ohio has rewritten equal protection jurisprudence in the State, badly misreading and misapplying decades of decisions from this Court that explained the rational basis test. Because the State, according to the decisions below, did not prove that the "evil" that the

legislature sought to address — the decline in teaching time — was caused by collective bargaining, a law restricting such bargaining fails the test. This is wrong in several respects. First, the court below improperly placed the burden on the *State* to prove the relationship between the statute and the State's legitimate reason for enacting it. This Court has never put such a burden on the government under the rational basis test. Second, the court in essence concluded that the legislature made a sloppy policy decision. Yet, as this Court has stated in applying the rational basis test, "judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." *Beach Communications*, 508 U.S. at 313-314, quoting *Vance v. Bradley*, 440 U.S. 93, 97 (1979). The court below stepped well outside the clear parameters of rational basis scrutiny, and that decision warrants this Court's review to correct a serious misreading of federal law.[1]

Ohio's faculty workload statute in effect does two things: (1) it requires the adoption of workload standards and (2) it exempts those workload standards from Ohio's collective bargaining statute for public employees. The first half — designed to "effect a change in the ratio between faculty activities in order to correct the imbalance between research and teaching at four-year undergraduate state institutions," 83 Ohio St. 3d at 234-35 — is, as even the court

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[1] The opinion below invalidated R.C. 3345.45 under the Equal Protection Clause of both the federal and state constitutions. As the court stated, those provisions — the Fourteenth Amendment of the U.S. Constitution and Article I, Section 2 of the Ohio Constitution — "are functionally equivalent, and the standards for determining violations of equal protection are essentially the same under state and federal law." 83 Ohio St. 3d at 233. The court treated the "propriety of R.C. 3345.45 under both of these constitutional provisions as a single question." *Id.* There is no suggestion in the opinion that the judgment rests on an adequate and independent state ground.

below found, "a legitimate governmental interest." *Id.* at 235. In striking the second part of the statute, however, the court below went far astray. By imposing new burdens on the State to prove the rationality of its laws, the court below fundamentally altered long-settled and critically important ground rules governing countless future legal challenges to Ohio's laws. The decision is so obviously erroneous that it merits summary reversal without need for oral argument.

THE DECISION BELOW DIRECTLY CONFLICTS WITH THIS COURT'S STANDARDS FOR RESOLVING EQUAL PROTECTION CHALLENGES.

The Supreme Court of Ohio has created a new burden of proof in equal protection cases — a burden unlike any this Court has ever imposed. In rejecting an equal protection attack on a statute that requires the members of foreign service to retire at the age of 60, this Court succinctly explained the burden that applies:

> In ordinary civil litigation, the question frequently is which party has shown that a disputed historical fact is more likely than not to be true. In an equal protection case of this type, however, those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.

Vance, 440 U.S. at 110-111. More recently, this Court strongly reaffirmed this principle, holding that "those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might

support it." *Beach Communications*, 508 U.S. at 315, quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973).

The court below, while correctly saying that "all legislative enactments enjoy a strong presumption of constitutionality," and properly noting that "under rational-basis scrutiny, a legislative distinction will be upheld if there exists any conceivable set of facts to justify it," 83 Ohio St. 3d at 468, reversed course when resolving the case before it. The court's decision that the State's "arguments . . . miss the mark, as they fail to address the essential question of whether there exists a rational basis" for the challenged law, *Id.* at 235, twists the rational basis test from a shield protecting the State's laws into a sword hanging over them. By forcing the State to demonstrate that collective bargaining was responsible for the decline in teaching hours at Ohio's four-year public universities, the court below ignored the holdings of *Beach Communications* and *Nordlinger*. In light of those decisions, Ohio had no obligation to present evidence supporting the distinctions drawn by R.C. 3345.45, and instead AAUP bore the burden of showing that there was no conceivable basis that might support the need for the classification. *See Beach Communications*, 508 U.S. at 315; *Vance*, 440 U.S. at 111; *Sullivan v. Stroop*, 496 U.S. 478, 485 (1990). "A State . . . has no obligation to produce evidence to sustain the rationality of a statutory classification. A legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach Communications*, 508 U.S. at 315. *See also Nordlinger*, 505 U.S. at 15; *Heller v. Doe*, 509 U.S. 312, 320 (1993).

As the three dissenting justices below stated, simply because "collective bargaining has not *caused* the decline in teaching proves nothing in assessing whether the faculty

workload standards imposed pursuant to R.C. 3345.45 legitimately relate to that statute's purpose of restoring losses in undergraduate teaching activity." 83 Ohio St. 3d at 238. "It matters not that the General Assembly fashioned R.C. 3345.45 to treat an undesirable symptom rather than to eliminate its cause." *Id.* As this Court has said, the "legislature may select one phase of one field and apply a remedy there, neglecting the others." *Beach Communications*, 508 U.S. at 316 (citations and quotations omitted), and in doing so, "it is up to legislatures, not courts, to decide upon the wisdom and utility of [economic and social welfare] legislation." *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963). *See also Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 469 (1980)* (where the evidence is "at least debatable," a court may not substitute "its judgment for that of the legislature").

In weighing legislative distinctions that affect neither a suspect class nor a fundamental right, this Court has never looked to the State for reasons supporting them. Rather, such laws should stand "if any state of facts reasonably may be conceived to justify" them. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961). This Court has again and again applied this principle. *See, e.g., Beach Communications*, 508 U.S. at 313; *Stroop*, 496 U.S. at 485; *Gilliard*, 483 U.S. at 601; *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 315-316 (1976).

Here, the facts underlying the statute are undisputed. The State wanted to enhance the quality of undergraduate education by increasing statewide undergraduate teaching activity at four-year undergraduate public colleges and universities. To effect a change from research to teaching, the State developed standards for instructional workloads. To ensure that the workload standards would be implemented consistently statewide by its public institutions, the State

removed the new standards from collective bargaining. As explained by the dissenters, "imposing uniform workload standards upon university faculty at state four-year institutions . . . was probably the most direct means of accomplishing [an increase in teaching activity] available to the General Assembly." 83 Ohio St. 3d at 241.

Now, in light of the decision below, Ohio courts are headed in a new and unsettling direction. That decision merits summary reversal, for it so clearly misreads this Court's equal protection standards, undermines the bedrock principle that legislative enactments enjoy a presumption of constitutionality, and casts on the State an obligation to justify its laws where the Constitution has never been read to create such a burden before.

CONCLUSION

The petition for a writ of certiorari should be granted and the decision below summarily reversed.

Respectfully Submitted,

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